

## REQUEST FOR PROPOSAL



### THE STATE BAR OF CALIFORNIA

This document is a Request for Proposal ("RFP") for purchase of 650 desktop computers and computer monitors and related comprehensive installation services.

Please submit 5 hard copies of your proposal or e-mail your proposal requesting an acknowledgement of receipt by e-mail **no later than 5 p.m. on October 10, 2003**. All responses to the Request for Proposal shall be submitted to:

The State Bar of California  
1149 South Hill Street  
Los Angeles, CA 90015  
Attn: Resty Buenavidez, Director of Technology Systems  
E-Mail: Resty.Buenavidez@calbar.ca.gov

#### I. INTRODUCTION

The State Bar of California, created in 1927 by the California Legislature and written into the constitution as a judicial branch agency in 1960, is a public corporation within the judicial branch of state government.<sup>1</sup> The State Bar serves as an administrative arm of the California Supreme Court, overseeing the regulation, admission and discipline of lawyers licensed in the State. The organization has approximately 600 employees and an operating budget of \$53.7 million. Approximately half of the State Bar's employees are in San Francisco, half are in Los Angeles, and three are in Sacramento.

In accordance with California law and the State Bar's procurement policies, contracts in excess of \$50,000 are ordinarily subject to formal competitive bidding. As a governmental agency, the State Bar usually receives favorable governmental pricing and contract terms and conditions.

The State Bar of California currently has approximately 650 Hewlett-Packard desktop computers and monitors (PCs) that it intends to replace with approximately 650 new IBM ThinkCentre S Series computers. Detailed explanations of the current and new PCs are described below.

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<sup>1</sup> General information about the State Bar of California is available at its web site at (<http://www.calbar.ca.gov>) in a document entitled, "[The State Bar of California - What Does It Do, How Does It Work?](#)"

This Request for Proposal (RFP) seeks the services of vendor who will procure the desktop computers and monitors and will also provide comprehensive computer and software installation and data migration services for the new PCs. Half (325) of the PCs must be replaced by December 31, 2003, and half must be replaced by June 30, 2004. Bidders will be required to strictly comply with the delivery and installation schedule detailed by the State Bar.

## **II. GENERAL INFORMATION**

### **A. Submission Requirements**

The submission requirements for the RFP are detailed below. **Any proposal shall constitute an irrevocable offer for 90 business days following the deadline for its submission.** Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Where any notice is required or permitted to be made in writing, such notice to the State Bar must be sent by U.S. mail **and** either facsimile or e-mail.

Proposals must contain the following information:

1. A brief description of the history and organization of your firm, and of any proposed subcontractor. (Those who intend to submit a proposal in response to this RFP are addressed in the remainder of this document as “you.”)
2. Copies of business licenses, professional certifications or other credentials, together with evidence that your firm, if a corporation, is in good standing and qualified to conduct business in California.
3. The most recent annual report or balance sheet and income/expense statement, including financial data.
4. References from at least three clients for whom you have, within the past 18 months, procured comparable or substantially similar items of computer equipment and performed similar services as described in the “Statement of Work” section below. The State Bar will contact references only if you are a finalist in the evaluation process and only after notifying you.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. A general description of the techniques, approaches and methods to be used in completing the project.
7. A concise summary of the best evidence that you are able to provide, at the highest level of quality, the services described in “Statement of Work” below.

8. A detailed cost proposal, including any travel costs and other expenses. As the State Bar may award a contract based on the initial offer, you should make your initial offer on the most favorable terms available. The State Bar reserves the right, however, to engage in discussions with those vendors whose proposals fall within a competitive range, to request revised pricing offers from them and to make an award and/or conduct negotiations thereafter. The cost proposal should break out the costs for each of the following:
- 650 computers as specified in Section IV.A. below.
  - 650 monitors as specified in Section IV.A. below.
  - Delivery charges assuming half the equipment would be delivered to the State Bar offices at 180 Howard Street, San Francisco, CA 94105, and half to the State Bar office at 1149 South Hill Street, Los Angeles, CA 90015.
  - Any trade-in allowance for the State Bar existing computers and monitors.
  - Any discount offered by the vendor for the right to identify the State Bar as vendor's client. Vendor should be aware that any such identification materials must be (i) pre-approved by the State Bar, which will not be unreasonably withheld; and (ii) in the form of a customer list for informational purposes only, rather than an endorsement. Notwithstanding any offered discount, the State Bar reserves the right, in its sole and complete discretion, to decline vendor's offer to be identified as a client if vendor's bid is ultimately selected. Vendors should thus also include anticipated cost for the State Bar without a discount, if applicable.
  - A total price for comprehensive installation services as described in Section IV.B. below.
  - A total price for 3 years of maintenance or more as described in Section IV.C. below.

Any proposal failing to break out the costs as required above is subject to rejection as not responsive, and may not be considered.

## **B. Critical Dates**

If you intend to submit a proposal, keep these critical dates in mind:

Request for Proposal released	<b>September 26, 2003</b>
Proposals due	<b>October 10, 2003</b>
Vendor selected	<b>October 22, 2003</b>
Installation begins	<b>November 3, 2003</b>
First 325 PCs installed	<b>December 31, 2003</b>
Services completed	<b>June 30, 2004</b>

## **C. Rejection of Proposals**

**The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever. All**

proposals will be reviewed for completeness with respect to the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may also cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse you from full compliance with the RFP requirements.

Any proposal determined to be not competitive, or where the cost is not reasonable, may be rejected.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

#### **D. Evaluation Process and Highest Scored Responsive Proposal**

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Responsive Proposal ("HSP").

The State Bar reserves the right to determine the suitability and responsiveness of proposals based on whether a given proposal meets administrative requirements, technical requirements, the review team's assessment of the quality and performance of the equipment and services proposed, and cost.

During the evaluation process, the State Bar may require your representative to answer questions with regard to the proposal and/or require you to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSP. The weight assigned to each criterion appears in parentheses following each item.

1. Responsiveness of the proposal to original specifications set forth in the RFP, including agreement with the State Bar's contracting requirements (25%).
2. The technical ability, capacity, and flexibility of the vendor to provide, at the highest level of quality, the equipment and services described in "Statement of Work" (see Section IV below), in a timely manner and on budget, as confirmed by the quality of any demonstration, client references, demonstrated success on projects with similar requirements and the quality of the vendor's performance on previous contracts with the State Bar (25%).

3. The financial viability of the proposal and the vendor as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (15%).
4. The total cost of the proposal. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the services over the term of the contract (35 %).

#### **E. Award and Execution of Contract**

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice will be sent to the address identified in the proposal on or about **October 23, 2003**, of the State Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by **October 30, 2003**. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected Contractor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any others who submitted timely, responsive and responsible proposals to this RFP.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing only to:

The State Bar of California  
1149 South Hill Street  
Los Angeles, CA 90015  
Attn: Resty Buenavidez, Director of Technology Systems  
E-Mail: [Resty.Buenavidez@calbar.ca.gov](mailto:Resty.Buenavidez@calbar.ca.gov)  
213-765-1234

#### **F. Errors in the RFP**

If you discover any ambiguity, conflict, discrepancy, omission, or other error in the RFP, you should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all those to whom the RFP was sent.

If prior to the date fixed for submissions, you know of or should have known of an error

in the RFP but fail to notify the State Bar of the error, you shall bid at your own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

#### **G. Questions Regarding the RFP**

Questions regarding the RFP may be addressed in writing to Mr. Resty Buenavidez at the State Bar (contact information above). Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this paragraph. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

All questions and answers regarding the RFP may be shared with all who submitted proposals.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, you may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, you must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and you will be notified.

If you believe that one or more of the RFP's requirements are onerous or unfair, or that they unnecessarily preclude less costly or alternative solutions, you may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. **The State Bar must receive any such request by 5:00 p.m. on October 6, 2003.**

#### **H. Addenda**

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing or faxing an addendum to the vendors to whom the RFP was sent. If any vendor determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than three (3) days following the receipt of the addendum.

#### **I. Withdrawal and Resubmission/Modification of Proposals**

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by an appropriate authorized official of your firm. Your firm may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered.

Proposals may not be modified after the evaluation process begins.

## **J. Protest Procedure**

You may protest the award if it meets all the following conditions:

1. You have submitted a proposal which you believe should be scored as the Highest Scored Proposal, under the criteria set forth above;
2. You believe that your proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. You believe that the State Bar has incorrectly selected another vendor.

If you are qualified to protest you should contact Bill Brauer at the State Bar of California, telephone, 415-538-2543, e-mail [Bill.Brauer@calbar.ca.gov](mailto:Bill.Brauer@calbar.ca.gov), to attempt an informal resolution. If he is unable to resolve the protest to your satisfaction, you must file a written protest within five (5) days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons you believe the award to be invalid. The written protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Attention: Sam Quan, Acting Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within thirty (30) days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

## **K. News Releases**

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

## **L. Disposition of Materials**

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at your expense. One copy of each proposal will be retained for official files and will become a public record upon receipt by the State Bar. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. Your

consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, you agree to these terms and waive any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

### **III. CURRENT ENVIRONMENT**

The State Bar of California's staff is almost evenly divided between the State Bar's headquarters in San Francisco and its office in Los Angeles. In addition, the State Bar has two small satellite offices in Sacramento. The three offices are connected via a T1 line with servers co-located in Los Angeles and San Francisco.

#### **A. Desktop/Applications**

- 1 Desktop – Hewlett-Packard Vectra Vli8, VL400 Series and IBM PC300GL. Processors range from 400-800Mhz Pentium 3. Memory in each desktop ranges from 128MB to 256MB RAM.
- 2 Desktop Operating System –Desktops are currently operating on Windows NT 4.0 SP6 with a few systems on Windows 98.
- 3 Standard Desktop Applications – The standard applications for each desktop are Microsoft Office 2000 Standard, Corel WordPerfect 9, Adobe Acrobat 6.0 Reader, McAfee v4.5.1 Anti-Virus, and IBM Client Access Express (for AS/400 hosted applications).
- 4 Specialized Applications – In addition to Standard Desktop Applications, various departments have specialized applications, which are listed below from the most to the fewest users:
  - a. CaseMap ([www.casesoft.com](http://www.casesoft.com)) for Litigation Support.
  - b. FTR ([www.ftrgold.com](http://www.ftrgold.com)) for Court Digital Recording System.
  - c. Macromedia Dreamweaver, Flash and Fireworks ([www.macromedia.com](http://www.macromedia.com)) for Internet Publishing.
  - d. Client-Server applications built with ASNA Visual RPG ([www.asna.com](http://www.asna.com)).
  - e. Client-Server applications built with Visual Basic.
  - f. Meeting Track ([www.gomembers.com](http://www.gomembers.com)) for Meeting Registration Management.
  - g. ProLaw ([www.prolaw.com](http://www.prolaw.com)) for Case Tracking.



- h. Microsoft Visio, Access, and Project ([www.microsoft.com](http://www.microsoft.com)).
- i. Hummingbird ([www.hummingbird.com](http://www.hummingbird.com)) for Document Management System.
- j. Adobe Acrobat and Photoshop ([www.adobe.com](http://www.adobe.com)).
- k. Cisco Virtual Private Network (VPN) Client ([www.cisco.com](http://www.cisco.com)).

## **B. Network**

### **1 Servers**

- a. IBM AS/400 Model 720 (2 on V4R5, 1 on V5R2).
- b. Intel Servers – IBM xSeries and HP/Compaq (Windows 2000) servers supporting file and print services, MS-SQL databases, Hummingbird document management, and various client-server applications.
- c. Printers – Hewlett-Packard LaserJet 2000, 4000, 5000, and 8000 Series printers.

### **2 LAN and Wiring Specifications**

- a. 4-pair category 5 data cable for LAN connection with an AT&T #M100BH1-262 8 position EIA/TIA 568A coded 8 wire modular jack.
- b. Wall jacks mounted in a single gang modular faceplate, AT&T #M13A-262.
- c. Workstation jacks mounted in a single gang modular furniture faceplate, AT&T #M13C.
- d. LAN and printer cables terminated in the IDF on Krone 50 pair module assemblies #6639-1-001-01.
- e. One (1) free-standing relay rack (Anixter 102422 or equal) equipped with one (1) Wire Management Panel (Panduit WMPHF2) and two (2) Wire Management Panels (Panduit WMP-1) in each IDF.
- f. FDDI conductor 62.5/125 micron fiber optic cable with ST connectors. Each floor's IDF cable is continuous and without splices.

### **3 Internetworking Hardware**

- a. MDF Distribution Hub–Cisco 6509, 9 Slots (dual power supply) supporting full line of Ethernet and Fast Ethernet media modules. All modules can be hot-swapped for uninterrupted operation and optimized for collapsed backbone topologies.
- b. IDF Hubs – Cisco 3500 and 2900 XL Stackable 10/100mbps and Gigabit Ethernet switches.
- c. Cisco 26xx and 17xx Routers.
- d. Cisco PIX 515E Firewall.
- e. Cisco 3000 Series VPN.

A diagram of the State Bar’s network configuration is attached to this RFP as Exhibit 1.

#### **IV. STATEMENT OF WORK**

The vendor selected as the HSP under this RFP will be required to procure the required computer equipment and perform comprehensive installation services under a detailed timeline provided by the State Bar. Delivery and installation of 325 PCs must occur in stages as described in the timeline provided by the Bar and be completed no later than December 31, 2003. Delivery and installation of the remaining 325 PCs must occur in stages as described in the timeline provided by the Bar and be completed no later than June 30, 2004.

##### **A. New Computer Equipment**

As replacement for the Bar’s existing personal computers and monitors, the State Bar intends to purchase the IBM ThinkCentre S Series, Model 8183-23U desktop computer with Windows XP Professional, 512 MB of RAM, and CD-RW drive, and the IBM ThinkVision Model L170 6734-AB0 monitor.

The replacement PCs must have Microsoft XP Professional OS with IBM Director Agent installed. The replacement PCs should also come with a standard profile requested by the State Bar for shortcuts, bookmarks, and the like.

##### **B. Comprehensive Installation Services**

You will be expected to set up and install the desktop computers and monitors, standard desktop software, and department-specific software according to State Bar requirements, which are set forth in this section. Your proposal should explain how you intend to meet the requirements and include answers to any questions posed. All “yes” or “no” answers should be explained.

##### **1. Setup and Configuration**

The State Bar wishes to utilize Microsoft's Active Directory's Group Policy software to install the standard desktop and department-specific applications insofar as possible. The State Bar will create the required installer packages (.msi files) and provide you a means of deploying the necessary software in San Francisco and Los Angeles. You will be expected to load our customized version of the base Operating System (OS), Microsoft XP Professional, and ensure that the OS and other specified installer packages are deployed correctly. You will also be expected to manually load and configure any software you cannot install using Group Policies. Answer the following questions in your proposal:

Have you created and successfully deployed software installation packages using Group Policies on PCs running Microsoft XP Professional?

Have you successfully configured Group Policies to manage software on PCs running Microsoft XP Professional?

How large and how complex was your largest project that utilized Group Policies to deploy and manage software?

If you have used Group Policies to manage software, have you experienced problems?

Do you recommend an alternate method of deployment and desktop software management?

Do you recommend any third-party software management tools that integrate tightly with Active Directory's Group Policies and provide the following advanced functions: software metering, inventory-based targeting, scheduled installations, status reporting, WAN-sensitive distribution, and Wake-On-LAN?

## 2. Migration Services

You must provide services for migrating from the existing standard desktop "personality" to the new desktop system. At minimum, these services should include migration of the following:

User account profiles.

Desktop shortcuts, taskbars, wallpaper, display settings, etc.

Local network settings, TCP/IP and DNS settings, mapped networked drives, and folder/directory sharing.

Local and networked printer settings.

Application settings, including preferences, templates, bookmarks, address books, macros, and the like.

### 3. Delivery

You must deliver the configured systems to State Bar offices in Los Angeles and San Francisco in accordance with the State Bar's delivery schedule. For initial planning purposes, the State Bar anticipates the installation of as many as 24 computers a day or 120 per week. Deliveries may be multiple times a week but must be at least once a week. You must supervise delivery and personnel to ensure that equipment arrives as scheduled and at the locations designated by the State Bar. Delivery dates and times will be finalized in any contract awarded pursuant to this RFP. At the time of delivery, you are expected to provide us with an inventory of the items delivered.

### 4. Deployment

Daily deployments are planned during normal working hours, which are 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding State Bar holidays. For planning purposes, you should assume that the 650 computers would be deployed at the rate of at least 24 per day through June 30, 2004. Deployment includes the activities listed below.

Installation (includes start up, configuration and network connectivity) of the new computer in the desk area.

Taking inventory, as described in the Deliverables section.

Migrating user's "desktop personality" as described in the Migration Services section.

Removal of the existing computer from the desk area.

Completion of a Quality Assurance checklist.

Attachment of a User Instructions and XP "Tips Sheet" document (provided by the State Bar) to each computer.

Dressing up (organization) of computer cables, wires, etc. in the desk area according to the bar's instructions.

Staging of the removed desktop in a designated area for quick re-installation if needed.

Vendor will provide services to move the replaced computers to a designated staging area.

## 5. System Management Tools

You are expected to use the IBM Director V4.1 system management tool in providing services. The tool will allow State Bar system administrators to view and track in detail the hardware configuration of local and remote systems and monitor the usage and performance of critical components, such as processors, disks, and memory.

Have you implemented IBM Director or are you familiar with the product?

Do you have experience with alternative system management tools that you would prefer to use and would recommend? If yes, your explanation should include an estimate of the cost of the tool.

## 6. Post-Deployment Deliverables

Once deliveries commence, you should provide the State Bar Project Manager with the information specified below regarding all computers installed during the previous week. This information should be provided no later than 10:00 a.m. each Monday.

Asset numbers for PCs and monitors affixed with asset tags provided by the State Bar.

An inventory, by version, of all application software installed.

A Deployment Completion Report that includes a list of each PC delivered, the name of the State Bar user to whom the computers was assigned, the name of the technician who installed the computer, the date and time of installation, and a summary of any issues/problems/follow-up actions pertaining to the deployment of the computer, including whether each computer passed acceptance testing procedures. A Deployment Quality Assurance Checklist for all PCs in a particular deployment should be completed and attached to the report.

## 7. Project Management

Your proposal must provide a plan that explains how you will meet the requirements set forth in this section and elsewhere in the RFP. Your plan should identify all resources required to achieve its objectives successfully and should name and state qualifications of the project manager and other personnel assigned to the project.

### **C. Maintenance**

Following deployment of the new PCs, you must provide a hardware warranty program and software support. Your proposal should provide firm pricing for a minimum of 3 years of maintenance. Answer the following questions in your proposal:

What standard and customized customer service plans do you offer?

Is customer service available 24 hours a day, seven days a week? If so, explain any terms and conditions of providing such service.

Do you offer a “self-maintainer” program for self-repair under warranty? If you do, describe any applicable certification processes and attach supplemental literature.

Can you guarantee that replacement parts installed under warranty will be identical to original components?

How do you assign account management responsibilities, resolve disputes, and manage escalation of problems? If use of a subcontractor would vary your response, explain how.

## **V. CONTRACTING REQUIREMENTS**

Upon selection of a Vendor, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable. If appropriate, the State Bar’s first choice is to incorporate the master purchasing terms and conditions applicable to the State of California to the Bar’s agreement with the selected contractor (“Contractor”).

The State Bar contemplates that, in addition to the technical terms described above in this RFP, final agreement between the State Bar and Contractor will include, without limitation, the following terms. Contractor’s agreement to contract on these terms shall be presumed unless specifically reserved by Contractor in its proposal.

### **A. Time of Essence**

Time is of the essence with respect to Contractor's performance of the services and equipment to be provided in the final agreement. If the Contractor fails to deliver the equipment, or any part of it, at the time and place specified in the Agreement, the Contractor shall be in breach of the agreement, and Contractor shall pay to the State Bar an amount equal to: 1) the difference between the Contractor’s bid and the actual cost to the State Bar of purchasing the equipment from another vendor; and 2) any additional installation charges incurred by the State Bar due to Contractor’s delivery delay. This remedy shall be in addition to and not in lieu of any other remedy for breach available to the State Bar under law or otherwise in the agreement.

## **B. Warranties and Representations**

Contractor warrants and represents that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the highest standards of the industry. Contractor will supply at all times an adequate number of well-qualified personnel to perform the work. Contractor will provide a contact person available and authorized to remedy any non-conformity with this warranty.

Contractor warrants that the goods and services furnished under the Agreement shall conform to the requirements of the Agreement (including all descriptions, specifications and drawings made a part of) and such goods will be merchantable, fit for their intended purposes, free from defects in material and workmanship, and fit for their intended purposes. Contractor will, at its sole cost and expense, promptly perform any and all corrections of error that occur as a result of its own, its contractors' or subcontractors' negligence, make any corrections and modifications to the PCs necessary or desirable to cure any non-conformity with the specifications, and repair said system or components so as to remedy any defects in material and/or workmanship.

To the extent that third party manufacturers have made any warranties or other commitments regarding products or services that the Contractor has included in its bid to the State Bar of California, the Contractor will assign to the State Bar of California all of such manufacturer's warranties and commitment, and/or take such action as may be necessary to ensure that the State Bar is entitled in full to all manufacturer's warranties.

Contractor warrants that it will arrange with the manufacturers for a direct or sublicense through of any operating systems software, general utilities, or applications software included with the equipment.

Contractor warrants that the equipment will be new and of merchantable quality and that Vendor will be able to convey clear and marketable title to the equipment by bill of sale.

Contractor represents and warrants that it is a duly authorized value added reseller of the equipment purchased by the State Bar and that it has a value added reseller's agreement currently in force with each applicable company under which the Contractor is authorized to make the commitments made in the Agreement.

Contractor represents and warrants that no claim, whether embodied in an action past or present, of infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against Contractor or any entity from which Contractor has obtained such rights relative to the proposal presented to the State Bar hereunder.

### **C. Delivery, Insurance, and Title.**

1. Delivery. The equipment will be delivered to the State Bar's San Francisco or Los Angeles Office in strict conformance with the schedule set forth by the State Bar.
2. Insurance. Contractor will assume full responsibility for insuring the equipment in transit and dealing with transportation carriers to ensure delivery of shipments, to locate missing or late shipments, to resolve billing for transportation charges, and to submit and to resolve all insurance claims arising from damage to its shipments.
3. Title. Title to the equipment purchased under the agreement will remain in the Contractor until it is delivered at the State Bar's site, at which time title shall pass to the State Bar. Contractor will furnish the State Bar a bill of sale and other documents requested by the State Bar to enable it to perfect unencumbered title to the equipment.
4. Transportation Costs. All transportation charges on equipment will be prepaid by the Contractor and will be added as a separate charge on Contractor's invoice to the State Bar to be paid by the State Bar, except: (a) Contractor will bear the cost of transportation of equipment shipped for mechanical replacement purposes; (b) Contractor will bear the cost of transportation for equipment removed as a result of equipment failure, whether for convenience or at the State Bar's demand; and (c) Contractor will bear the cost of transportation for equipment removed as a result of default by Contractor of any of the terms and conditions of the agreement.

### **D. Equipment, Tools, Supplies**

Contractor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. Contractor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

### **E. Acceptance Testing**

Once Contractor has completed installation and data migration as detailed under the Agreement, each PC installed by Contractor will go through acceptance testing under standards established by Contractor and the State Bar. After all PCs have been accepted under the Acceptance Testing procedures, the State Bar will certify project acceptance.

### **F. Payment Schedule**

Payment for equipment will be made following delivery and within 30 days of receipt of invoice by the State Bar, as follows: 90% of payment for services will be made after



successful acceptance testing on each PC. The remaining 10% of payment for services will be made after the full project acceptance.

#### **G. Indemnity Obligations of Contractor**

To the fullest extent permitted by law, Contractor agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns harmless from and against any and all losses, claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the Agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Contractor, Contractor's employees, subcontractors, agents, representatives or assigns (collectively, "Contractor's Agents") in the performance or non-performance of the professional services required to be performed by Contractor under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Contractor agrees that its obligations under this indemnity will survive the expiration and termination of this agreement.

In the event both the State Bar and Contractor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Contractor will agree to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein Contractor defends the State Bar.

Contractor will defend, indemnify and hold harmless State Bar (its Board of Governors, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liability, losses or damages or any expenses or costs whatsoever to the State Bar, including reasonable attorneys' fees and costs, as a result of any claims, demands, damages, costs or judgments against the State Bar based on allegations that, as a consequence of the services rendered hereunder, any program or software designed, developed, amended, merged or restructured, or any part thereof, alone or in combination with other programs or software, infringes on any patent or copyright or misappropriates a trade secret. If any such program or software or any part thereof, is held to constitute an infringement or misappropriation of third party intellectual property rights, and use of the program or software is enjoined, Contractor will, at its own expense, either: (1) procure for the State Bar the right to continue to use the program or software or part thereof; (2) replace the program or software with a non-infringing replacement, provided that such replacement does not compromise performance and otherwise meets the State Bar's specifications; or (3) modify the program or software to make it non-infringing, provided that such modification does not compromise performance and otherwise meets the State Bar's specifications.

#### **H. Insurance Obligations of Contractor**

Contractor will provide and keep in full force and effect during the term of this

agreement, at Contractor's own cost and expense, the following insurance policies for the joint benefit of Contractor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000.00), and an each claim limit of Two Million Dollars (\$2,000,000.00).

Contractor will deliver true and correct copies of its insurance policies required above, and certificates of such insurance to the State Bar offices at 180 Howard Street, San Francisco, CA 94105, Attn: Bill Brauer, Procurement Officer, within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that Contractor's policy shall be primary and that any insurance carried by the State Bar shall be noncontributing with respect thereto. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If Contractor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and Contractor will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. In addition to the insurance required to be obtained and maintained by Contractor, if Contractor assigns any portion of the duties under this agreement in accordance with the terms, hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

Contractor will immediately notify the State Bar if Contractor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Contractor's commercial general liability insurance contains such restrictive endorsements, Contractor will have five (5) business days to remove said restrictions. If Contractor is unable to do so, the State Bar may terminate this agreement, and will be required to give Contractor no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

## **I. Termination**

1. **Appropriation of Funds.** If the term of this agreement extends into fiscal years subsequent to that in which it is approved, the continuation of this agreement is subject to the appropriation of funds for such purpose by the California State Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected equipment, products, software, or hardware furnished under this agreement, terminate any services supplied to the State Bar, and relieve the State Bar of any further obligation.
2. **Default by Contractor.** The agreement may be terminated by the State Bar upon thirty (30) days written notice to Contractor in the event Contractor is in default under any of its provisions.
3. **Remedies for Contractor Default.** In the event the agreement is terminated due to the default by Contractor, the State Bar reserves the right to offset the reasonable cost of all damages caused to the State Bar against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore. In addition, the State Bar will have the right to have the services completed by other parties and Contractor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in the Agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by Contractor's default.

In the event any goods furnished or services provided by the Contractor in the performance of the agreement should fail to conform to the requirements of the Agreement, the State Bar may reject such goods or services, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State Bar, and immediately replace all such rejected items with others conforming to the Agreement.

3. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of a substantial portion of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements; (d) failure of Contractor to disclose a relevant financial interest as required by this Agreement, or (e) expiration of the agreement.

## **J. Confidentiality and Publicity**

Contractor will retain all confidential information provided by the State Bar in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under this agreement without the prior written consent of the State Bar. Without waiving any right to obtain

monetary damages, the State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. Contractor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

#### **K. Nondiscrimination**

During the performance of this agreement, Contractor will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Contractor will comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable regulations promulgated there under (California Administrative Code, Title 2, section 7285.0 et seq.). The Contractor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

#### **L. Assignment/Subcontracting**

1. **Assignment.** The Contractor will not assign or transfer its interest, in whole or in part, under this agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar. The parties acknowledge that the State Bar's obligations under this agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in this agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under this agreement, until such time as the State Bar or the State Bar's assignee makes payment to Contractor of all fees and payments then due and payable to Contractor.
2. **Subcontracting.** Contractor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, subject to the written approval of the State Bar.

Contractor will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between Contractor and its subcontractor to be maintained during the term of this agreement. Any such proposed subcontract shall be subject to the written approval of the State Bar prior to award of such subcontract by Contractor. No subcontract will be approved unless Contractor provides a written guarantee that Contractor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

#### **M. General Provisions**

1. **Force Majeure.** In the event that the State Bar or Contractor is delayed in performing any of its respective obligations under the Agreement due to force majeure (including but not necessarily limited to acts of God, war, government

regulation, disaster, strikes or other labor disputes, civil disorder, acts of domestic or international terrorism or other emergencies beyond the reasonable control of the parties making it illegal or impossible to perform), and only if notice of such delay is promptly and properly given, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed. However, no delay will be permitted if the date, schedule or time period for performance of the obligation is expressly stated in this Agreement not to be subject to extension by reason of force majeure. In the event of a delay due to force majeure, the affected party will exercise due diligence to shorten, avoid and mitigate the effects of the delay and will keep the other party advised as to the continuance of the delay. In the event that force majeure makes completion of obligations under this Agreement impossible, the Agreement may be terminated by either party, by written notice, without any liability, penalty, or prejudice, whatsoever, for any of the reasons listed in the first sentence of this paragraph.

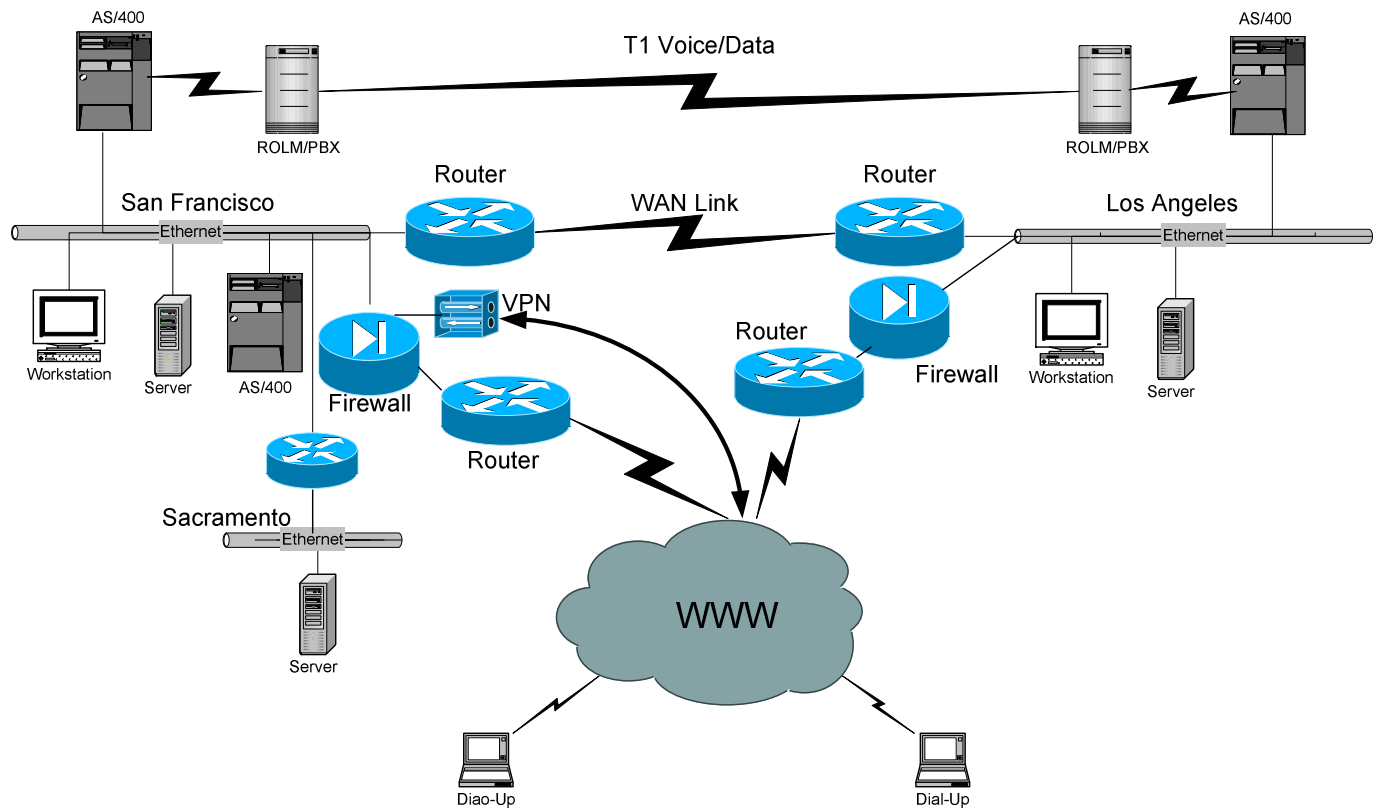
2. **Governing Law.** This agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.
3. **Arbitration.** Any question, claim or dispute arising out of or in connection with the RFP or any subsequent agreement between the parties: (a) unless otherwise specified in this paragraph, shall be conclusively settled by binding arbitration, and (b) must be brought no later than one (1) year after the expiration of any agreement entered into by the parties. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and will be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Unless the subject matter of the dispute is otherwise pre-empted by federal law, the arbitrator will be bound to apply legal principles in accordance with California law, but without regard to its conflict of laws provisions. By agreeing to this arbitration clause, neither party waives any defenses or immunities available under California or other applicable laws, including but not limited to California Government Code Section 810 *et seq.* (Tort Claims Act). Each party shall be solely responsible for payment of its own costs and fees incurred during the course of arbitration. In no event will the arbitrator have the power or authority to award consequential damages, indirect or special damages, lost profits, loss of goodwill, or speculative damages. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco under the terms and conditions of this paragraph.
4. **License.** In those instances where required, Contractor represents and warrants that Contractor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special

licenses in good standing and in full force and effect at all times while Contractor is performing the services pursuant to this Agreement.

5. **Relationship of Parties.** Contractor is not an agent of State Bar for any purpose whatsoever, and is not granted, by the terms or execution of this Agreement, any express right of authority to assume or create any responsibility on behalf of, or in the name of State Bar, or to bind State Bar in any manner or thing whatsoever.
6. **Severability.** If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.
7. **Waiver.** Failure of either party to enforce, at any time, any provision of this Agreement shall not be construed as a waiver of such provision or of any other provisions, or of the right of such party thereafter to enforce such provision.

\* \* \* \* \*

## Exhibit 1 - State Bar of California Network Diagram



*This diagram is confidential and privileged material. Any review, use, distribution or disclosure by others is strictly prohibited.*